

# THE NEW-YORK CITY-HALL RECORDER.

VOL. III.

For March, 1818.

NO. 3.

At a COURT of OYER and TERMINER and General Gaol Delivery, holden at the City-Hall of the City of New-York, on the ninth day of July, in the year of our Lord one thousand eight hundred and seventeen.

BEFORE THE

Hon. WILLIAM W. VAN NESS, *one of the Justices of the Supreme Court of Judicature of the State of New-York.*

JACOB RADCLIFF, *Mayor.*

ARTHUR BURTIS, and } *Aldermen.*  
JOSEPH W. BRACKETT, }

(INFANTICIDE—MURDER.)

CLARISSA DAVIS and JOHN  
M'DONALD'S CASES.

MAXWELL, *Counsel for both Prosecutions.*

PRICE, *Counsel for Davis, and SAMPSON and PHOENIX, Counsel for M'Donald.*

On the traverse of an indictment against the mother, for the murder of her infant, it was held that evidence of the concealment of the child, by her, soon after its birth, unaccompanied by positive testimony that the child was born alive, was insufficient to produce a conviction.

A person called as a juror, on a trial for murder, who declared that he did not believe it right, in any case, for a man to suffer the punishment of death, was held unfit to be impanelled.

On the traverse of an indictment for the murder of a wife, where the evidence is merely circumstantial, and from an impure source, it is the safer course to acquit.

On this occasion we sincerely regret that it becomes our duty to exhibit such a melancholy picture of human nature. For the honour of humanity, gladly would we have thrown a pall over objects loathsome and disgusting to the feelings; but our apology must be, that the principles decided may be useful to future courts and juries—indeed, we do not know but that, in truth, even the examples presented to the general reader, in these trials, may be beneficial in a moral point of view; inasmuch as, in contemplating human nature in its lowest state of depravity and wretchedness, many may learn to avoid the evils which thus lead to debasement and ruin, and those from whom better things are expected, may have their thoughts elevated, and their gratitude

kindled to that Divine Being who hath made us to differ.

Clarissa Davis was indicted for the murder of a male child, on the 2d day of January last, by suffocating it in a privy; and M'Donald for the same offence committed on Catharine M'Gowan, his wife, on the 17th day of March last.

Without entering into a minute detail of the testimony, we shall recur to the prominent facts in each case.

On the traverse of the indictment against Clarissa Davis, it appeared that she lived in the capacity of a servant in the family of William Adee, in Beekman-street, and on the day laid in the indictment, a male child of hers, about an hour old, was found suffocated in the vault of a privy belonging to the house.

From the testimony of Dr. Matthew Cunningham, a surgeon who was called to examine the child, it appeared, that there was a bruise on its left temple, and its navel string was cut, which in nine out of ten cases will produce death. Its flesh was firm, and the general appearance of the body indicated that it was born alive. This was the opinion of the doctor, formed from the healthy appearance of the child, and from observing none of the indications which evinced that it was born dead.

Maxwell read the examination of the prisoner, taken in the police, from which it appeared that the child was born dead, when no person was present; and, in about an hour afterwards, she concealed it in the place where it was found.

Maxwell here rested the cause.

Van Ness—We think there is not sufficient evidence to sustain this indictment. In England there is a particular statute which provides, that where a mother conceals a child recently born, she is bound to show that it was born dead. The burden of proof, by the provisions of that statute, is cast on the mother; and the presumption of law is against her. But in this country we have no such act, and this case is to be decided according to the principles of the common law. It is there-

fore incumbent on the public prosecutor to show that the child was born alive, and killed by the mother. The legal presumption is, that it was born dead, which the prisoner declares in her examination.

Besides, it is an important consideration in this case, that the *mother* is accused of the murder of her own infant child—a crime perpetrated against the first principles of nature.

For these reasons, we think the prisoner ought to be acquitted: still, gentlemen of the jury, the question is for you to decide.

The jury immediately acquitted the prisoner.

On the traverse of the other indictment Joshua Pell, on being called as a juror, prayed to be excused from serving, on the ground, that although he was not a friend, he had religious scruples, and did not believe it right for any human tribunal to inflict the punishment of death.

On a challenge to the favour by Maxwell, the two first jurors impanelled were sworn as triors, the challenge was tried, and the mayor charged the triors, that the question for their decision was whether Joshua Pell stood indifferent between the people and the prisoner.

The triors decided that Pell was unfit, and Maxwell opened the cause to the jury.

It appeared in evidence, that the prisoner, the deceased and her sister Abigail Welch, lived in the chamber of a miserable hovel in Bancker-street. Francis M'Monagle lived in an apartment adjoining, and Jane Johnson and Catharine Johnson, two black women, lived in a room below.

On the morning of the 13th of March, John Bedient, the coroner, on being called to view the body of the deceased, found her on the floor with four or five wounds on her head, which appeared to have been made by striking with some dull instrument. The greatest wound was over the right eye, and was so large that a person might put in two fingers. Another large wound was on the back of the head. The floor was covered with blood; and an axe, the handle of which was bloody, and having a very dull edge, was standing near the door.

Dr. Moses Cunningham concurred with the coroner, with regard to the situation of

the deceased, and the number of wounds found on her head. He further proved, that the wounds were bruised externally, and it was his opinion, at the time, that they were made with the axe. The skull was not fractured in any place, and it was the opinion of the doctor that the wounds occasioned death by a concussion of the brain.

It appeared that the prisoner, his wife, and Abigail Welch, were almost continually in a state of beastly intoxication: the sisters frequently quarrelled together, the one being jealous of the other. The husband was in the habit of beating one or both of them in a cruel manner, insomuch that the face of the wife was frequently bruised to pieces, and her head was often bound up with a handkerchief.

On St. Patrick's day, about 4 o'clock in the evening, M'Monagle returned home and found Abigail Welch, with two black eyes, in his room, into which she fled for refuge. She stated that she dared not go into the room, for she feared he would murder her. Shortly after he saw the prisoner in his own room striking with a piece of board on something soft, and heard a woman's voice, "Johnny, dear, don't kill me!" To this the prisoner said, "I have not done with you yet."

Jane Johnson and Catharine Johnson proved, that the prisoner had been quarrelling with his wife all day; and, at about five in the afternoon, they heard her begging for her life, repeating "Johnny, dear, spare my life—see my blood!" He frequently threatened to kill her, and exclaimed, "I have not done with you yet." The witnesses did not apprehend much danger, because they had heard them quarrel so often before. They feared to go into the room.

Towards dark the noise ceased, and the next day the deceased was found in the situation before described.

Rachel Smith, a white woman, proved that about five weeks before the 17th of March she heard the prisoner threaten the deceased that he would wallow in her blood; and on that day, the witness saw him strike his wife three times, and make the same threat. His conduct towards her was very inhuman: one night, during cold weather, he turned her out, and she crept for shelter into an entry.

It was proved by Robert Perine, that the prisoner having deposited two pension papers with the witness, came on the evening of the 17th of March, between seven and nine o'clock, to his house to get the papers, for the purpose of carrying them to some man at Tammany-Hall, to pledge for \$5 to keep up St. Patrick's day. At this time his face was besmeared with blood; and, on being asked by Perine how it came there, the prisoner said he had been in a spree.

The hat of the prisoner, with these papers therein, was found near the deceased the next morning.

On the morning of the nineteenth, the prisoner was drawn forth by David Fenton, from a quantity of shavings in the yard of a cooper's shop, near the Washington-market. He was without hat or shoes, and alleged that he came from Peekskill. The witness, having heard of the murder, but not knowing the prisoner, called him M'Donald, and he then inquired of the witness, saying, "Is she dead?"

George Raymond, the keeper of the Bridewell, proved that when brought to that place, the prisoner had on a shirt died with blood.

It was proved by the keeper of the old Alms-house, that on the 17th of March, about dusk, Abigail Welch came there in a forlorn situation, for the purpose of gaining admission. She staid there all night.

It was proved on behalf of the prisoner, that the deceased was subject to fits; and that previous to the 17th of March, she had the same wounds on the head and face as described by the coroner and Dr. Cunningham. It also appeared, from the testimony on behalf of the prosecution, that on the afternoon of St. Patrick's day the deceased and her sister had a violent quarrel which ended in a fight.

The witnesses to the principal fact on behalf of the prosecution were persons in the lowest situation in society.

The examination of the prisoner, taken in the police, alleged, that his shirt was bloody, by reason of having dressed his wife's wounds; and that, on the evening of the 17th, he left his wife and her sister quarrelling together.

Sampson, in an impressive address to the jury, argued, that the case on behalf of the prosecution, depended on a combi-

nation of circumstances: that these circumstances, separately or conjoined, did not furnish evidence of the guilt of the prisoner beyond the possibility of a doubt. The facts in the case furnish a stronger presumption against Abigail Welch than the prisoner; and there is no circumstance in the case, but that may be perfectly reconciled with his innocence.

The testimony also, from which the jury were to draw their inferences of the prisoner's guilt, could not be relied on. The witnesses to the principal facts were the dregs of society; and no doubt, on that day, were in a situation themselves, in which they were incapable of attending to, or remembering distinctly, the facts, concerning which they had been called to testify.

The counsel, in the conclusion of his address to the jury, said, that he hoped this trial would afford to his countrymen, an awful, yet salutary lesson. He regretted, that a day originally designed for religious purposes—a day, devoted to the memory of a patron saint\*—a day which, above all others, was calculated to awaken in the bosom of the exile, the dearest recollections of the land of his fathers, should be prostituted to purposes of drunkenness and carousing. The counsel had seen, and he had seen with heartfelt sorrow, his countrymen, regardless of the sacred duty they owed to their God or themselves, devoting that day to riot and beastly intoxication. He had often cautioned and warned them against the evil, he had told them, if they wished his countenance or assistance in their difficulties, they must not disgrace their country, or degrade themselves. This

\* St. Patrick was the first Catholic Missionary, who introduced the Christian religion into Ireland. We speak from memory, when we say this was about four hundred years after Christ. Like most other people in an untutored state, he found it difficult to instruct them in the great doctrines of the church; and it is said, that one day, while preaching in the field, finding it difficult for his hearers to comprehend the idea of the Trinity, which he was about explaining, he plucked from the earth a sprig of clover; and, by the stalk and three leaves of this appropriate symbol, satisfactorily explained the mysterious doctrine of the great Three and One. Hence, on this day, which is celebrated in the Catholic as other festivals are in the Episcopal church, the sons of St. Patrick wear on their hats a sprig of clover, which, among them, is called the shamrock.



occasion afforded a memorable example ; and the counsel hoped it would not be useless. The prisoner himself would amend his future conduct : he would for ever remember, that the vice of intoxication, the worst of all evils, had once brought him in jeopardy of his life.

Phoenix summed up the case to the jury on the same side.

Maxwell argued, that if two persons are concerned with another in an offence of this description, both are equally guilty ; and, if the jury should believe that Abigail Welch perpetrated this murder, and the prisoner was aiding, abetting, or assisting, he would be equally guilty.

The counsel, after adverting to the prominent circumstances of the case, faithfully applied the definition of murder, which he read from Blackstone, to the offence of the prisoner as disclosed in the evidence. The important facts which evinced the guilt of the prisoner the counsel reduced under four general heads :

1. The antecedent threats and menaces of the prisoner.
2. His false and inconsistent statement when arrested.
3. The blood with which his shirt was died.
4. His flight and concealment.

The mayor charged the jury, that it was not his intention to expatiate on the turpitude of the offence with which the prisoner at the bar was charged. In a capital case, where the charge was the murder of a wife, the law required from the court and jury, all the care and attention in their power in determining of the guilt or innocence of the party accused. In such a case it is ever desirable to have positive proof ; but that species of proof is not in all cases afforded, and we are then obliged to have recourse to circumstances. The first question proper for the consideration of the jury, is, whether the deceased came to her death by means of violence from another, or whether she died a natural death. Should the jurors believe she did so die, the prisoner must, of course, be acquitted.

This supposition, however, is opposed by the testimony ; and, in the opinion of the court, it would be travelling too far out of the evidence, to believe it.

The second, and, indeed, the principal

question is, whether the deceased was killed by the prisoner ; and the third, and that upon which the defence of the prisoner depends, is, whether the deceased came to her death by means of violence from Abigail Welch.

The mayor here went into an examination of the testimony relied on by the counsel for the prisoner, as leading to the conclusion on the affirmative side of the third question submitted for the consideration of the jury.

His honour here adverted to the principal circumstances relied on by the prosecution against the prisoner.

1. The threats of violence, which were certainly strong.

2. The testimony of the blows inflicted on the prisoner, as stated by Francis M'Monagle ; the only direct proof leading to the principal fact. The testimony of Jane and Catharine Johnson, supports that of M'Monagle. They heard the blows, and knew the voices ; and if these witnesses are to be believed, their statements go far in support of the charge.

3. The prisoner went to the house of Robert Perine, on the evening of the 17th, and his face was bloody, and on being asked what occasioned it, replied, that he had been in a frolic. After this, we hear nothing of him, until taken up by Fenton, on the morning of the 19th. His condition and his declarations on that occasion, and on being carried to bridewell, afford circumstances, in connexion with others, of which the jury are to judge.

The mayor here brought to the view of the jury, the principal circumstances relied on by the counsel for the prisoner, and concluded his charge by saying, that as the offence was one of the highest in the law, a great degree of caution and circumspection should be exercised in weighing the testimony.

Should the jury believe it unsatisfactory, or should it not be sufficient to produce a firm conviction of the prisoner's guilt, he ought to be acquitted. But if, on the other hand, after maturely examining the circumstances, they should think the evidence satisfactory, however painful, it would be their duty to convict the prisoner.

The jury found him not guilty.

At a COURT of GENERAL SESSIONS of the Peace, holden in and for the City and County of New-York, at the City-Hall of the said City, on *Monday*, the 2d day of *March*, in the year of our Lord one thousand eight hundred and eighteen—

## PRESENT,

The Honourable

CADWALLADER D. COLDEN,  
*Mayor.\**

A. L. UNDERHILL, *Alderman.*

JAMES WARNER, *Special Justice.*

HUGH MAXWELL, *District Attorney.*

JOHN W. WYMAN, *Clerk.*

## GRAND JURORS.

NICHOLAS C. EVERETT, *Foreman.*

STEPHEN BAKER,	JAMES JENKINS,
ROBERT BENSON, JR.	PETER LORILLARD,
ISAAC BELL,	JOHN LANG,
BENJA. BIRDSALL,	SAMUEL LEGGETT,
R. CUNNINGHAM,	ABR. K. MEAD,
EL. DOOLITTLE,	JAMES OAKLEY,
FRANCIS DOREMUS,	P. SCHERMERHORN, JR.
ISRAEL HORSEFIELD,	JOHN STANBERRY,
D. G. HUBBARD,	JOHN HYSLOP.

## (MISDEMEANOR—PROCUREMENT.)

## FRANCIS WITTENBURGH'S CASE.

MAXWELL and PRICE, *Counsel for the Prosecution.*

WILSON and GARDENIER, *Counsel for the Defendant.*

A public intelligence-office keeper, who recommends a young female stranger to a house of ill fame, knowing it to be such, is indictable for a misdemeanor at common law, though such stranger be herself a prostitute.

A witness, who, in open court, makes use of vulgar obscene language, which he imputes to another, whose declarations he undertakes to recite in a continued relation, but without being required to state the precise words, will be ordered into custody.

During the last term, the defendant was indicted (the indictment containing two counts) for a misdemeanor at common law; for that he is now, and for a long time has been, the keeper of a

public intelligence-office, in the city of New-York, where servants, male as well as female, for a certain compensation by them paid, are furnished with places—and persons, in want of servants, for a certain compensation by them paid, are furnished with servants—that the defendant, on the 5th of February, 1818, at, &c. wickedly intending and devising, by means, and under colour of his business and calling, to aid, abet, and assist divers lewd and debauched persons, to the jurors unknown, in the seduction and ruin of young female girls, and to incite to prostitution and to pander to the lustful passions of divers debauched and profligate men, to the jurors unknown, did, on application to him, the defendant, as the keeper of a public intelligence-office, by Mary Jones, for a place in a decent family, recommend her, the said Mary Jones, to one — Davis, the keeper and maintainer of a certain ill governed and disorderly house, where men and women come and meet together for the purpose of, &c. he, the defendant, well knowing the said — Davis to be the keeper and maintainer of a common brothel, and intending by such recommendation to ensnare and debauch, and cause to be ensnared and debauched, the said Mary Jones; against the peace of the people of the State of New-York, and their dignity.

The other count stated the offence in a more general manner, but in substance it was the same.

Maxwell opened the prosecution by stating to the jury, that the case was novel in the history of our criminal jurisprudence. It would appear in evidence, that a young female stranger, by the name of Mary Jones, some time ago, came to the city for a place as a chambermaid in a decent family. She applied to the defendant, as the keeper of a public intelligence-office, for a place; and he furnished her with several tickets, containing the names of persons, whom, on her application, were found not to be in want of a servant; and she found that several of these persons had never applied to the defendant. After he supposed that her patience was exhausted, knowing her to be in a destitute situation, he gave her a ticket for a Mrs. Davis, the keeper of a common brothel

\* During the principal part of this term, the Recorder was on the bench in the place of the Mayor, who was recently appointed by the Council in the room of the former Mayor.

in Collect-Street. This woman lent her a suit of clothes, and otherwise decorated her for the reception of visitors. Finding it to be a house of ill fame, the girl escaped at twelve at night, wandered through the streets, and at length seeing a light in or near the Jews' Synagogue, recently erected, she crept in there for a shelter, and slept on the carpenter's shavings. After this, in her wanderings through the streets of this city, she was taken up by the watchmen, and by the artless simplicity of her story, created an interest in her favour. She complained to the grand jury, and one of the gentlemen belonging to that body sent her home to his family. Such, said the counsel, is the nature of the case, the particulars of which will be detailed by the principal witness.

Mary Jones, a young female, of an interesting appearance, and between seventeen and eighteen years old, on being sworn, gave a similar relation to that stated by the public prosecutor in his opening. She stated, that on her first arrival from New-Brunswick in the packet, she went in the first place to the intelligence-office kept by the defendant; that after she had escaped from the house of Mrs. Davis, and staid in the Synagogue, which was on Saturday night, she went to Brooklyn, and the next day went to church. She returned and went to the office again, and told the defendant that he had recommended her to a bad house, &c. when he admitted he knew something about the house, and entered into an indecent conversation with her, wherein he spoke of the advantage she might derive from walking in Broadway towards evening for suitors.

We propose, on this occasion, for we conceive it necessary, to present merely the prominent points of the testimony—a detail could not be endured.

John Thorp, a witness on behalf of the defendant, on being sworn, was requested by the counsel to relate the facts touching Mary Jones, as far as may have come to his knowledge. He stated, that he was in the office when she came, and she then passed by the name of *Mary Ann Warner*. It was cold, and she was thinly clad. He invited her to enter the

gate and come near the stove; when a conversation between them ensued. The witness proceeded in a rapid manner, and without the least qualification, to state the words alleged by him to have been uttered by her, being the most scandalous and indecent which the language can afford. The court, with much warmth, interfered, and stopped the witness.

On the cross-examination, this witness further stated, that he was in the employ, and attended the office of the defendant, who gave the girl a ticket for Mrs. Davis, she having previously sent an order for a chambermaid by the captain of her house.

The court ordered this witness to be taken into custody.

Adolph Gatterfield, a witness for the defendant, on being sworn, corroborated the statement of Thorp in many particulars; especially, in the indecent behaviour and language of Mary Jones. He differed from that witness in his description of her dress.

Barent Gardenier, a witness for the defendant, on being sworn, stated, that the defendant, though in indigent circumstances, was assiduous in his business, and devoted his attention in rendering his family comfortable. His general character is good.

Several witnesses concurred with the last, in showing the defendant's general good character.

Several witnesses were here introduced on the part of the prosecution, who proved, that since Thorp had been in custody, he had declared that he had been put up to swear as he had; but George Wilson, a witness for the defendant, explained this declaration of that witness, as referring to the manner of his giving testimony—that is, he was put up to state the precise words used by the woman.

Mary Jones, on being again called, stated that she saw Thorp in the office; that he commenced an indecent conversation with her; and that afterwards he accompanied her to a Mrs. Gotier's, in Chamber-street, for a place.

Ann Adeline Parmeter, a young lady, a witness for the defendant, testified, that, about two years ago, the defendant recommended her as a private instructress in the family of the Hon. De Witt Clin-



ton. She had known the defendant two years, and his character is good.

Dr. Hosack, by consent of Counsel, on being sworn, stated that one of the family of a Mr. Laverty, in this city, stated to the witness, that that gentleman found Mary Jones in a taylor's shop, seeking employ, and finding her in a destitute situation, gave her a place in his family.

Israel Case, one of the Jurors, on being affirmed as a witness for the defendant, stated, that, ten or twelve years ago, Adolph Gatterfield was in the employ of the witness, and was then in some repute, but that afterwards he kept a dance-house in Tryon-Row.

After Messrs. Wilson and Price had summed up the case to the Jury, Gardener moved the court for an adjournment of the cause, for the purpose of enabling the defendant to produce further testimony touching the character of Mary Jones.

Maxwell consented: the court adjourned until the next morning, cautioning the Jurors to hold no conversation with, and receive no communication from, any person, on the subject of this case.

In the morning, Gardener opened the further defence, by stating to the Jury, that he should prove that Mary Jones, on her passage from New-Brunswick to this city, in the packet, and during her stay on board, behaved in an indecent and incontinent manner. He should further show, that she had been discharged from the house of Laverty, and that of Gabriel Lewis, where she went to service, after the time of the injury complained of in this indictment, by reason of her indecent conversation and demeanour.

William G. Keech and John Auter concurred in showing, that, about the last of November, the girl, Mary Jones, whom they both identified, came from New-Brunswick in a packet called the Greyhound, and that her conduct on board, according to her confession to them, was scandalous in the extreme.

The time, however, spoken of by these witnesses, did not correspond with that stated by Mary Jones, by several weeks; she having stated that she came in the packet from New-Brunswick a short time after New-Year.

From the testimony of Robert Grant, a coloured man, and Hannah Timanes,

servants in the family of Gabriel Lewis, it appeared that the conduct of Mary Jones, while there, was grossly indecent, and for that reason she was discharged.

It further appeared, that she had been discharged from the house of Mr. Laverty before she went to that of Lewis.

From the further testimony on behalf of the prosecution, it appeared, that, after this woman was discharged, as before related, she was a wanderer in the streets, and was taken up by the watch—carried to the police; and, in giving her relation to the Grand Jury, an interest was excited in her favour. One of the Jury sent her home to his family; and it appeared from his testimony, that he had been at some pains in the investigation of her character, and the result convinced him that she was not as she had been represented. This witness and others on the part of the prosecution, stated, that Mary Jones appeared to be an inexperienced country girl, poor, miserable, and friendless.

Engle Myers, a witness for the prosecution, stated, that, three or four days after New-Year, Mary Jones came from New-Brunswick to this city, in a packet. She was poorly dressed, and requested the witness to recommend her to a place; and he sent her to a Mrs. Isaacs, a Jewess, living in or near the Synagogue, where she remained about a week.—While on board the vessel her demeanour was good.

Mary Jones, being again called, was asked why she did not yesterday state that on her first arrival in the city she went to live with Mrs. Isaacs. She answered, hesitatingly, first, that she did not want to state about her being with that woman; and next, that she forgot it.

The witness, on her cross-examination, denied the indecency attributed to her on board the packet, by Keech and Auter, and also that in the house of Lewis, by his servants. She further denied that she came to this city from New-Brunswick in November.

In the progress of the trial, the books of the defendant, containing the names of applicants for places, and also those for servants, were produced; from which it appeared, that, on the 13th of January, Mary Ann Warner applied for a place as

a chamber-maid, and that, on the 19th of the same month, Mary Jones applied for the same situation; and the application of Sarah Davis, for a woman in that capacity, appears to have been made the same day.

Before the court had proceeded to sum up the evidence, the mayor, the hon. Jacob Radcliff, directed their attention to the two points in the case:

1. Supposing Mary Jones to be a decent woman, and that she was beguiled by the defendant to enter the house of Davis, knowing that she kept a house of ill fame, this is conceded to be a misdemeanor.

2. But, suppose she was not an innocent woman, and was sent to that house by the defendant, would this be a public offence?

The cause was ably summed up by the counsel on both sides.

The mayor charged the jury, that the defendant, being the keeper of a public intelligence-office, was bound to conduct that business with fidelity; inasmuch as it was an office in this community of considerable public importance.

Should the jury believe that Mary Jones was an innocent person, and that the defendant beguiled her into the house of Davis, knowing that to be a house of ill fame, in the view of the court, this would be a very high-handed misdemeanor.

But the evidence in this case presents another question: suppose this to be a woman of ill fame, as some of the witnesses for the defendant represent, and the defendant recommended her to the house of Davis, knowing its character, is he guilty of a public offence? In other words, has the keeper of an intelligence-office the right of supplying women for houses of ill fame? The court do not hesitate, on this subject, to say, that we consider this also a misdemeanor.

The principal question, therefore, for the determination of the jury in this case, is, whether the defendant, at the

time he recommended Mary Jones to the house of Davis, knew that she kept a house of ill fame. On this point, the testimony is not direct; and the jury, in determining, may recur to all the facts and circumstances of the case.

Should the jury believe that the defendant did not know the character of this house, he ought to be acquitted. But, if he had this knowledge, and sent Mary Jones there, for the purposes of prostitution, whether she was an innocent woman or not, he ought to be found guilty.

The jury pronounced the defendant guilty.

On the last day of this term, as the recorder was about to sentence the defendant, Gardenier moved in arrest of judgment, on the broad ground, that the offence laid in this indictment was unknown to the common law; and that there was no precedent, no principle or definition, to be found in the books embracing the offence.

Maxwell, contra, was stopped by the court.

The recorder delivered the opinion of the court, and over-ruled the motion made on behalf of the defendant. His honour pointed out the distinction between an injury of a private nature and a public offence, and compared the offence, with which the defendant was charged, to that of selling by false weights and measures in a grocery. In that case, the offence arises from the circumstance, that the grocer deals with the public at large; and *that is a public offence in him*, which would not be were it practised by a private individual.

In the view of the court, the keeper of a public intelligence-office is as much connected with the public, as a grocer; and the offence, of which he has been found guilty, is more atrocious, in a public point of view, than selling by false weights and measures.

The defendant, in consideration of his poverty, was fined \$25 and the costs.